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January 24, 2006

BY HAND DELIVERY

The Honorable Vernon A. Williams

Secretary

Surface Transportation Board

1925 K Street, N.W.

Washington, DC 20423-0001

FILED

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JAN 24 2006

TRANSPORTATION BOARD

TRANSPORTATION BOARD

IMMEDIATE HANDLING REQUESTED

Re: STB Docket No. AB-878

*City Of Peoria and The Village of Peoria Heights, IL — Adverse
Discontinuance—Pioneer Industrial Railway Company*

Dear Secretary Williams:

Enclosed on behalf of Pioneer Industrial Railway Co., are an original and 11 copies of a petition to reopen the Board's August 10, 2005, decision in the matter, based on new evidence. Also enclosed is a check for the \$200.00 filing fee for this petition to reopen. As can be seen from the certificate of service attached, copies of this petition are being served today on all parties of record.

Please file stamp the 11th copy of this petition and return it to the person making this filing for return to me. If there are any questions concerning this proposal, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,

William A. Mullins

Enclosures

cc: Daniel A. LaKemper, Esq.
All Parties of Record

RECEIVED

JAN 24 2006

TRANSPORTATION BOARD

215639

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC



STB DOCKET NO. AB-878

CITY OF PEORIA AND THE VILLAGE OF PEORIA HEIGHTS, IL—ADVERSE
DISCONTINUANCE—PIONEER INDUSTRIAL RAILWAY COMPANY

PETITION TO REOPEN

FILED
CITY OF PEORIA HEIGHTS
PUBLIC HEARINGS

FILED

TRANSPORTATION BOARD

RECEIVED
TRANSPORTATION BOARD

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January 24, 2006

Attorneys for Pioneer Industrial
Railway Co.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. AB-878

**CITY OF PEORIA AND THE VILLAGE OF PEORIA HEIGHTS, IL—ADVERSE
DISCONTINUANCE—PIONEER INDUSTRIAL RAILWAY COMPANY**

PETITION TO REOPEN

PREFACE AND SUMMARY OF ARGUMENT

Comes now Pioneer Industrial Railway Company (“PIRY”), defendant in this adverse discontinuance proceeding, and requests that the Surface Transportation Board (“Board” or “STB”) immediately reopen and reverse its August 10, 2005 decision (“Decision”) in this matter in order to provide a means by which Carver Lumber Company (“Carver”) can be provided rail service over the Kellar Branch. The Board’s Decision enabled the Cities to force PIRY off the Kellar Branch (the “Line”) in Peoria, IL on the basis that PIRY’s contract with the City of Peoria (“City”) to operate the Kellar Branch might have expired, that the new operator, Central Illinois Railroad Company (“CIRY”), would provide adequate service to the shippers on the Line until such time as a new connection on the north and west of the Line could be established to provide the shippers on the Line with an alternative route, and that no shipper had expressed opposition to the City’s plans. We now know that none of the assumptions underlying the Board’s Decision have borne true. Reversing the Decision will enable PIRY to restore rail service; service that CIRY will not, and does not possess the physical means to, provide.

PIRY's instant petition is based on the new evidence presented in Carver Lumber's ("Carver") statement filed January 4, 2006 in this docket and its January 18, 2006 statement filed in Docket No. AB-1066X, *Central Illinois Railroad Company – Discontinuance of Service Exemption – in Peoria County, Illinois* (a true and correct copy pursuant to 49 CFR 1112.7 is attached hereto as Exhibit 1). Carver's filings show that the fundamental premises of the Decision are no longer true and that the circumstances have changed dramatically from what the Board believed them to be at the time of the Decision. There is now a shipper who has expressed opposition to the City's current plans and has requested that its service over the Kellar Branch be restored, including having PIRY provide that service if necessary. That shipper has now made clear that CIRY in fact has completely failed to provide the service that it had promised and that such service failures have cost the shipper over \$25,000 in added transportation charges in just four months, with no end in sight. The proposed new connection, which was to provide Carver with an alternative service route, remains unbuilt with no work having occurred for many weeks. Even when completed, Carver now expresses doubt that CIRY or the alternative route will provide the usable service that PIRY had previously provided. As a result of this new evidence and the fact that the circumstances have changed since the Board's Decision, the Board should reopen its Decision, reverse its findings, and provide PIRY with the opportunity to provide Carver Lumber with service.

BACKGROUND

In this proceeding, the Cities of Peoria and Peoria Heights, IL (the "Cities") obtained adverse discontinuance authority from the Board to remove PIRY from the Kellar Branch, a rail line PIRY had been serving for about seven years. In so doing, the Cities promised that all shippers served by the Line would continue to be served, initially by CIRY over the

existing Kellar Branch, and subsequently via an "alternative route" over a former Union Pacific line that was to be connected to the northern end of the Kellar Branch, where Carver Lumber was located, via construction of a new connection of about 1800 feet. In convincing the active shippers¹ on the Kellar Branch not oppose its plans the Cities made many representations and promises, including -

- "After completion of that track connection, CIRY will provide service from the west to the two shippers who are located on the western part of the Kellar Branch. The third shipper [Carver], who is located on the eastern part of the Kellar Branch, will be served from the east by CIRY or by another rail carrier arranged for by the City." [Application at 4.]
- "[N]o shipper in Peoria would lose rail service as a result of the track construction, service alteration and trail conversion. In substance, therefore, this is an adverse discontinuance proceeding incidental to a change of rail operators." [Application at 5.]
- "The benefit that will be obtained if this application is approved is continued rail service by an operator selected by the owner of the rail line." [Application at 7.]
- "[H]ere, the owners of the rail line have arranged for continuation of rail service by a new rail operator." [Application at 8.]
- "There is no evidence in this record that CIRY's rail service would be inadequate in any respect." [Application at 11. See also Application at 12 ("There is no evidence that CIRY's rail service on the Branch would be inadequate in any respect.")]
- "That action [adverse discontinuance of PIRY's service] would not result in loss of rail service for any current shipper on the Branch." [Application at 12.]

At the time, the Cities also attached a letter from Carver, which stated:

¹ At the time the City filed its adverse discontinuance against PIRY, there were three active shippers on the Line. Due in part to the Cities efforts to destroy the Kellar Branch, two of those shippers no longer ship by rail. Carver Lumber remains the only active shipper utilizing a very expensive transload operation as a temporary measure pending restoration of direct rail service.

For the past several years Pioneer Rail Corporation (PRY) has provided us with excellent service. . . . If continued operation by PRY on the line is not possible for some set of reasons, we do not object to working with a replacement carrier, provided that the City of Peoria can assure us of continued good service.

[Application, Appendix 6 at 4.] Carver went on to note the types of services being provided by PIRY and what would be required of the replacement operator to retain those services, specifying that "An engine be kept on the line at all times, ready to be pressed into service as needed, and crews are available on short notice to operate the equipment." Id. Moreover, Carver asked for "some reasonable [written] assurances that any change in delivering carriers or future construction plans will not result in problems for our company," including -

- "Assuring that the City will not allow any interruption of rail service to occur during the planned construction of the Western connection."
- "That the City will not allow discontinuation of service over the Kellar line until the Western connection is fully operational."

Application, Appendix 6 at 5.

"The City has responded to the concerns that were expressed by Carver Lumber Company," the Application stated. Application at 8. In support of that assertion, the City attached a letter to Carver from Peoria's Public Works Director, Mr. Van Winkle (who also verified that the facts stated in the Application were "true and correct"). The letter stated in part, "[T]he City assures you that . . . there is no interruption in your rail service."

Application, Appendix 6, page 6.

An attached letter from CIRY's vice president² made still more promises to Carver: "I hereby commit to providing service to all existing and future customers, commensurate with

² The then-vice president of CIRY, Don Gibson, also certified that CIRY's operations would comply with all federal safety requirements. Later, Mr. Gibson was indicted in a murder-for-

their rail transportation needs,” it said. “[W]e will keep an engine on the line at all times ready to be pressed into service as needed,” it said. “Our railroad will honor our contract with the City, which provides that we will pick up an[d] deliver cars within 24 hours after being notified by the Union Pacific that the cars have been placed.” Application, Appendix 6 at 8.

PIRY protested the Cities’ application, asserting that it had a continuing contractual right to operate the Line. PIRY Protest at 3-4. Moreover, PIRY challenged the Cities’ assertion that CIRY could adequately substitute for PIRY’s service. PIRY Protest at 5-6. The Cities replied, stating, “[T]he owner of a rail line should be permitted to replace the operator of the line unless shippers on the line and/or the community would be harmed as a result of the replacement.” Applicants’ Reply at 1. “Thus, the focus in an ‘operator replacement’ adverse discontinuance case is whether shippers would be adversely affected by a change in rail line operators.” Id., at 2. “As a result of acquisition of another rail line and construction of a track connecting that line to the Branch, rail service will be able to be provided to all shippers on the Branch,” the Cities reiterated. Id., at 3.

In a series of subsequent filings, the Cities made similar representations:

- “If the application for adverse discontinuance is approved, Central Illinois Railroad Company (CIRY) will be authorized to operate, and will operate, the full length of the Branch.” Applicants’ filing of May 11, 2005, at 4.
- Responding to notices from PIRY and the Small Railroad Business Owners Association that CIRY’s Vice President and witness before the Board had been jailed in lieu of a \$5 million bond for soliciting a hit man to kill a female acquaintance, the Cities stated that letters from that witness’ wife/CIRY’s president “provide assurances of CIRY’s qualifications to operate the Branch . . . Those assurances are satisfactory to the Municipalities.” Applicants’ letter filed May 27, 2005 at 1. Appended was a letter from CIRY’s new witness, stating that CIRY had stationed a locomotive near the line and was ready to

hire plot, while CIRY’s first and only attempt to provide service resulted in runaway railcars careening across public streets until they finally derailed.

conduct operations as soon as notified by the Cities that PIRY had been removed from the line.

- In a separate May 27 filing, the Cities stated “[I]n the unlikely event that CIRY were to be unable to provide that service, the Municipalities would contract with another operator (other than PIRY) to operate the Branch. One way or another, a replacement operator will be available if PIRY’s operation is discontinued as requested.” Applicants’ May 27 Reply at 3.

Based upon all of the foregoing, the Board issued its Decision granting the Cities’ adverse discontinuance application. Stating that its task was to “consider the relative burdens that continuation of service on the one hand, and cessation of service on the other, would have on the involved carrier, on the owner-lessor of the line, and on the public,” Decision at 7, the Board found:

- “Contrary to the arguments of PIRY and SRBOA, the evidence of record does not demonstrate that shippers will lose routing options or receive inferior service should PIRY’s service be discontinued.” Id.
- “The Cities’ contract with CIRY and the need for CIRY to seek our authority before service on this line can cease assures that granting the Cities’ application will not result in a diminution of service that has a serious adverse impact on shippers or the community.” Id.
- “Although we do not reach the question of whether the Cities’ interpretation of the agreement is correct, the shippers on the line will have rail service no matter which way a state court would hold. If the court accepts the Cities’ argument . . . CIRY would then remain as an authorized carrier able to serve shippers.” Id.
- “CIRY has stated that it will be able to provide adequate rail service to shippers on the Kellar Branch and the Cities agree. We find no basis on this record to conclude that the company, CIRY, will not be able to provide the rail service it has already been authorized to provide on the Kellar Branch.” Id. at 8.

PIRY moved the Board to reopen and clarify its Decision. Subsequently, PIRY informed the Board that, after it vacated the line under protest to avoid unsafe conditions that could arise from jointly occupying the line with CIRY, CIRY attempted, and failed

spectacularly, to deliver a two loaded cars to Carver Lumber using a trackmobile rather than the promised locomotive. The attempt resulted in runaway cars rolling unimpeded through at-grade crossings, colliding with parked railcars, and derailling. Nevertheless, on November 21, the Board chose not to reopen or clarify its Decision.

On January 4, 2006, Carver advised the Board that CIRY had never provided any service to Carver, despite being in sole possession of the line since August and despite Carver's requests to CIRY for service and Carver's meetings with the Cities' personnel. Carver also cited the fact that the so-called western connection, which was the focus of the Cities' supposed alternative route, had yet to be completed, that work on the connection had not occurred for many weeks, and that in the process of working on that trackage, the Cities' contractor had damaged the existing Kellar Branch, cutting Carver off from rail service entirely. Carver's transportation expenses had increased by more than \$25,000 for the period of August - December, with no restoration of service in sight. Carver again, as in its letter included in the Application, lauded the quality of service that it had received from PIRY, before PIRY was forced off the line. Finally, Carver reiterated that its willingness to accept service via the supposed western connection had always been conditioned on leaving the existing Kellar Branch in place until Carver could be assured that adequate service was actually available via the "western connection" route. See Exhibit 2.

The Cities responded in the CIRY discontinuance docket with yet another "assurance." See Exhibit 3. The Cities promised that CIRY would not consummate the discontinuance authority nor would the Cities remove the existing Kellar Branch "until the City certifies to the Board and to Carver that the track connection is complete and alternate rail service is available." No mention was made of the Cities' earlier assurances to hire

another operator if CIRY proved incapable of serving the line, nor did the Cities acknowledge that they had already removed a portion of the Kellar Branch or that CIRY had never provided any service to Carver.

By this time understandably skeptical of the Cities' and CIRY's assurances, Carver on January 18 reiterated its longstanding position that the mere promise of establishing a track connection did not satisfy the Cities' promises or commitment to Carver and the public to assure that workable and cost-effective transportation such as PIRY had previously provided was available via the "western connection." (See Exhibit 1.) The Cities answered Carver on January 19 (see Exhibit 4), stating that there was no justification for delaying discontinuance and removal of most of the Kellar Branch once the mere physical connections were established for the "western connection."

ARGUMENT

As set forth above, the Cities have made promise after promise after promise that no shipper would be harmed by the adverse discontinuance of PIRY's service in this docket. The new evidence contained in Carver's letters in Exhibits 1 and 2, however, shows all of those promises to have been entirely, utterly, grievously empty. Rather than continuing to accept more worthless promises from the Cities, the Board should now reverse the Decision and allow PIRY - the only carrier that has shown itself to actually be capable of and willing to provide service to Carver and other Kellar Branch shippers - to continue to do so.

Standards for Reopening.

Because the Decision is already effective, PIRY must seek reopening. In seeking to reopen that administratively final order, PIRY must show that the Decision involves material error, or must show changed circumstances or new evidence supporting a change in the

Decision. See 49 C.F.R. 1115.4 (2004). Yakima Interurban Lines Association-- Adverse Abandonment--In Yakima County, WA, STB Docket No. AB-600, 2005 STB LEXIS 405 (served Sept. 15, 2005) at *5 (“A petition to reopen will be granted only upon a showing that the action would be materially affected by new evidence, changed circumstances, or material error. 49 U.S.C. 722(c); 49 CFR 1152.25(e)(2)(ii) and (4).”).

PIRY's Petition Meets the Reopening Standards. Carver's new evidence shows that the circumstances have dramatically changed since the Board's original decision and that the premises on which the Board's findings were based did not come true. Relying on the Cities' and CIRY's representations, the Board made the following findings which have since been shown to be completely erroneous:

- “We find no basis on this record to conclude that the company, CIRY, will not be able to provide the rail service it has already been authorized to provide on the Kellar Branch.” Decision at 8.

To the contrary, however, PIRY's September 2 letter since the Decision has shown that CIRY's first attempt to operate the Kellar Branch resulted in runaway rail cars racing through multiple at-grade crossings, ending in a derailment about which Carver charitably states “evidence points to possible negligence on CIRY's part.” Exhibit 2 at 2. Moreover, Carver's letter shows that failed attempt at service to have been CIRY's one and only attempt at service. Thus, the only evidence of actual operation by CIRY conclusively demonstrates that CIRY is not capable of providing rail service on the Kellar Branch.

- “Contrary to the arguments of PIRY and SRBOA, the evidence of record does not demonstrate that shippers will lose routing options or receive inferior service should PIRY's service be discontinued.” Decision at 7.

Contrary to this finding, Carver's letter shows that Carver has received no service, despite multiple requests and multiple promises by the Cities and by CIRY. The one attempt at

service that CIRY made resulted in a disaster. It is indeed fortunate that no one was killed. And, of course, Carver's products appear likely to have been damaged in the derailment. The evidence shows, as PIRY has often contended, that Carver has received vastly inferior service - indeed that it has been completely cut off from rail service - for months by CIRY's and the Cities' failure to meet their promises on which the Board relied.

- "The Cities' contract with CIRY and the need for CIRY to seek our authority before service on this line can cease assures that granting the Cities' application will not result in a diminution of service that has a serious adverse impact on shippers or the community." Decision at 7.

To the contrary, however, Carver's letters show that CIRY ceased service after its one disastrously-failed attempt at operations, and did so without notifying the Board, even though it was simultaneously before the Board in AB-1066X seeking discontinuance authority. Moreover, Carver's letters show that this cessation of service has cost Carver in excess of \$25,000 in four months, with no end in sight as the feasibility and cost of the "western connection" remain a mystery. Carver's evidence thus shows that the Board's finding is no longer accurate.

The Decision stated that the Board's determination of the Cities' adverse abandonment application would be based upon "the relative burdens that continuation of service on the one hand, and cessation of service on the other, would have on the involved carrier, on the owner- lessor of the line, and on the public." Even the Cities agreed, stating, "[T]he owner of a rail line should be permitted to replace the operator of the line unless shippers on the line and/or the community would be harmed as a result of the replacement." Applicants' Reply at 1 (emphasis added). "Thus, the focus in an 'operator replacement' adverse discontinuance case

is whether shippers would be adversely affected by a change in rail line operators." Id., at 2 (emphasis added).

Clearly, the Cities' and CIRY's empty promises led the Board to findings which vastly misstated the negative impact on the shipping public of cutting off PIRY's service. While PIRY provided excellent service to Carver and others, CIRY has provided no service to Carver, has damaged the only shipment of Carver's products that it attempted to handle, and in the process caused a tremendous menace to public safety. Moreover, contrary to the Board's findings that service to shippers would continue, CIRY has cut off service and the Cities have cut Carver off from service by severing the Kellar Branch without completing its supposed replacement, letting that situation continue for months. As a result, Carver lost over \$25,000 while it waited patiently for CIRY or the City to come through on their promises. Only after months of broken promises did Carver finally bring its concerns to the Board directly.

CONCLUSION


It is patently clear that the public has been strongly adversely impacted by the string of empty, broken promises by the Cities and CIRY. These promises led the Board to allow the Cities to replace PIRY's excellent service with no service, no connection, and no alternative route. That certainly was not the Board's intent when it relied upon the Cities' and CIRY's promises when it granted the adverse discontinuance, but the circumstances have changed.

It is now clear that the shippers have been harmed by the replacement of PIRY with CIRY. It is now clear that the promises by the Cities and CIRY were empty promises. As a result, the original findings are no longer valid and the Board's Decision should be reopened and reversed. See South Central Florida Express, Inc.--Trackage Rights Exemption--Florida

East Coast Railway Company, STB Finance Docket No. 33562, 1998 STB LEXIS 853
(served Nov. 6, 1998)(reopening decision because of erroneous findings based on
misinformation in the exemption petition); The New York, Susquehanna And Western
Railway Corporation -- Abandonment Exemption -- Portion Of The Edgewater Branch In
Bergen County, NJ, Docket No. AB-286 (Sub-No. 2X), 1990 ICC LEXIS 243 (July 30, 1990)
at *10 (evidence of new embargo and new evidence of deteriorated line condition sufficient to
reopen denial of abandonment). Doing so would allow PIRY to restore service over the
Kellar Branch to provide service to Carver Lumber and possibly to rebuild rail service to
other shippers. Quite simply, the public interest would best be served by reopening and
reversing the previous Decision.

Respectfully submitted,

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Attorneys for Pioneer Industrial Railway Co.

CERTIFICATE OF SERVICE

I, David C. Reeves, hereby certify that on this 24th day of January, 2006, copies of the foregoing Petition to Reopen have been served by first class mail, postage prepaid, or by more expeditious means of delivery upon all parties of record to this proceeding identified on the Surface Transportation Board's website.

A handwritten signature in cursive script, appearing to read "David C. Reeves", written over a horizontal line.

David C. Reeves
Attorney for Pioneer Industrial Railway Co.

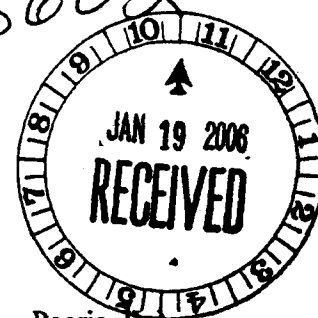
January 18, 2006

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001



**CARVER
LUMBER**

8700 N. UNIVERSITY AVE.
PEORIA, ILLINOIS 61615
(309) 692-2000 • FAX (309) 693-7919



RE: Docket No. AB-1066X (Kellar Branch Discontinuance of Service Exemption – Peoria, IL.)

Dear Mr. Williams:


I am in receipt of a copy of Mr. Thomas McFarland's letter to you of January 11, 2006. Carver Lumber Company appreciates the City's restatement of their promise not to remove any trackage from the Kellar Line "...until the City certifies to completion of the track connection" (from the West). We also appreciate CIRY's willingness to delay any consummation of its discontinuance authority until the City is successful in having their contractor complete the new Western connection with the Union Pacific Railroad's secondary line.

Mr. McFarland's same letter makes reference to his objection to PRY's January 9, 2006 "Petition for Stay" regarding the original STB decision of December 23, 2005. While there are reasons why it is not prudent for us to inject ourselves into any dispute between parties regarding PRY's claim of authority to operate over the Kellar Line, we do have a vested interest in making sure that delivery to our business over that line is made available to our company *until such time as the proposed alternate service from the West has been tested and found to meet our business needs*. While it is noteworthy that Mr. McFarland's letter does offer assurances regarding the positive intentions of both the City and CIRY, it also seems to imply that so long as the connection to the West is made and "...alternative rail service is available", the City has fulfilled its obligation to our company. If that indeed is Mr. McFarland's understanding of the situation, we respectfully disagree. In our letter to you of January 3, 2006 we stated our concerns about logistical challenges associated with proposed service from the West. We do not see that by simply connecting two tracks and making it possible for train operation across a new line assures that meaningful and/or affordable service will automatically follow, at least not without additional agreements I understand the City desires from the U.P.

Therefore, we reiterate to you and all interested parties that our position on this matter remains essentially unchanged from several years ago when the notion of turning a portion of the Kellar Line into a hiking/biking trail began to be discussed in earnest. We strongly support a new connection to the West but have always felt it should be *tested* over a reasonable amount of time to insure that service in the manner we have come to depend on in the past is not somehow compromised. If it is found that such service and/or cost has been substantially compromised, we would expect our rights to access the full Kellar Line to have somehow been preserved for the benefit of our company and any other shippers who may one day locate on the line.

We are not knowledgeable regarding all of the intricacies associated with PRY's "Petition for Stay", nor are we familiar with what options the STB might have at its disposal as an alternative that might help us attain our stated goals. Absent any such alternative options from the STB, or absent a strong written agreement with the City regarding a commitment to allow any new service from the West to be thoroughly tested prior to proceeding with a discontinuance, it would seem logical for a "Petition for Stay" to be given consideration if the Board feels it provides the best and strongest form of insurance that the full Kellar Line will remain available to us (open and operational, once repaired) while the new connection is given a fair test. We leave this matter in your capable hands and thank you for your time.

Sincerely,


Rob Happach
President / CEO

CC: Randall Ray; Thomas McFarland; Melinda Sammons (all via fax)

January 3, 2006

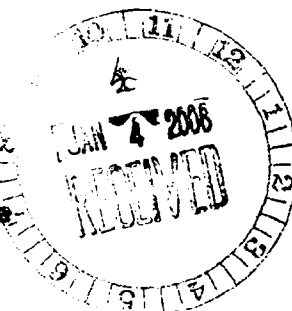
**CARVER
LUMBER**

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit
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PEORIA, ILLINOIS 61615
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RE: STB Docket No. AB-1066X
STB Docket No. AB-878

ENTERED
Office of Proceedings



Dear Secretary Williams:

I would like to thank the Board for sending me a copy of the recent decision to discontinue service over the Kellar Line effective 1/22/06. As I understand the ruling, on that date the Cities will be entitled to begin removing the rails and ties from that portion of the line that is planned for a hiking/biking trail. The purpose of this letter is to kindly request that the Board reconsider that decision of 12/22/05 and allow for restoration of continued operation over the Kellar Line. We make this request for several reasons:

I. THE "WESTERN CONNECTION" TO THE UNION PACIFIC IS UNFINISHED:

At this writing, construction on the new connection to the UP from the West is not yet 100% complete, as things have not gone well in the later stages of the project between the City of Peoria and their contractor of choice (Metroplex). In late Summer 2005, a relatively short portion of the northern end of the Kellar Line was taken down for repairs (with this section being down, no cars can be delivered, either from the east side via the old Kellar Line or from a new Western connection). At this writing the project sits uncompleted and idle with virtually no substantial work having been done for at least three months or more. In fact, Metroplex appears to have abandoned the project. This past September we were given a completion date for a new UP connection of October 2005 by former acting president of the CIRY (Allen Brown). With no progress being made, I met with officials from the City of Peoria on 11/21/05 and was given assurances that work on the Kellar Line would be completed within 2-3 weeks (or by early December). Our letter of 11/22/05 to the City confirmed our conversations of the day before and informed them that after 12/30/05 if no progress had been made, it was our intention to seek assistance from the STB in order to hopefully help force the process forward towards restoring direct service to our business as soon as possible. Since we have had no response from the City or any requests for an extension of that date, we now have no choice but to ask for your help.

II: SIMPLY CONNECTING TWO SECTIONS OF TRACK DOES NOT EQUAL SERVICE:

We have been advised by several, informed, interested parties over the years that viable, affordable rail service is not necessarily accomplished by virtue of simply making a physical connection to the UP line from the West. It seems to be much more involved than that. I believe I am accurate in saying that the logistics surrounding making successful deliveries over the new line are far from being thoroughly worked out. A commonly-mentioned solution has been that the UP grant trackage rights over their line so that a CIRY could go directly to the switch yard, pick up our cars and deliver them back to us all in one move.

Page 2

**RE: STB Docket # AB-1066X
STB Docket # AB- 878**

I understand that the UP has so far declined to allow that, and the City of Peoria plans to make an appeal to the highest levels in order to try and make it happen. I've further been informed by the City that they have "mothballed" plans to construct a "wye" at the junction serving our industrial park (so cars could be switched out from either northbound or southbound UP trains) in favor of a less costly "J", which will allow only for switching out from northbound trains. Considering most of our freight comes from the North, the UP will need to bypass the junction, proceed to their yard downtown, and switch our car(s) to a northbound train for the trip back to Pioneer Junction, where arrangements will need to be made for the CIRY to send a crew from out of town to make the final move to our yard. With all of that in mind, it would be inaccurate to say that we do not have concerns about how well we will be served (and for how long), and what the eventual cost will be. Absent the City's ability to secure trackage rights from the UP for others to operate over their line, we expect potential significant delays in the delivery of our cars, not to mention the extra cost to us for all of this handling.

III. FINANCIAL HARDSHIP / FINANCIAL ISSUES:

It is my recollection that it was then-acting president Allen Brown of the CIRY who made the decision to voluntarily abandon service to the line this past September after a CIRY derailment during their very first delivery attempt to us (evidence points to possible negligence on CIRY's part). Up to that point we had been serviced quite well by Pioneer Industrial Railway Company (PIRY) over a track that seemed to present no major problems in terms of proper, low-speed operation. CIRY's action to abandon service to the line seems to have caused the City to forge ahead with plans to have Metroplex repair the section of the Kellar Line that remains unfinished today. Since we were assured on two different occasions that the interruption of direct rail service to our business would only last a few weeks, we went ahead and made arrangements to have our cars unloaded elsewhere and the material trucked in. We actually expected this arrangement to result in a near "break even" situation for our company, due to having less carriers involved in the delivery/switching chain. But in time I came to learn that there is in fact no savings to us for this arrangement (see attached letter from PAL, our buying group). As a result, our small business has already incurred over \$25,000 in additional cost to have our material unloaded elsewhere and trucked to our facility, with no end in sight. Since it's quite possible that our company will be unable to recoup all or even any of these additional costs, we were prompted to meet with the City on 11/21/05 in order to see if we could facilitate re-establishment of direct rail service. We wish to make you aware of this situation in hopes that it might expedite your process and shorten the time frame that adds to our financial risk.

On page 4 of the STB report of 12/23/05 it was mentioned that "Regulation is not necessary to protect shippers from abuse of market power." However, The Union Pacific has sole rights to the secondary main line that will serve the new connection from the West, a virtual monopoly due to the fact that they are the ultimate "gate" through which our rail traffic will flow. Likewise, I understand that our options to efficiently tie into other main-line railroads will be more restrictive with a "new connection" versus the options via a complete Kellar Line. And I understand, to date the UP has not shown a great deal of enthusiasm for a situation where they will be obliged to handle small lots of cars (even single cars), perhaps multiple times, when they have more important business to conduct. Is there some safeguard in place to prevent them from pricing themselves out of their obligation? If not, service to our business would surely be threatened if such a thing were to happen. Without significant new business to the line in the form of

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**RE: STB Docket # AB-1066X
STB Docket # AB - 878**

large-volume shippers I doubt we can garner proper attention and/or cost structure from the UP. I am unaware of any potential prospects for such new business whatsoever at this time, although I understand that in the past the UP has offered to assist the City in marketing the line. (Also, to correct the record, there are no longer three shippers on the line - only our company, and we take about 50 cars per year). We are not sure what regulations are available to insure that "abuse of market power" does not occur, but we urge the STB not to overlook certain realities regarding the UP's role in the upcoming "new connection".

IV. PAST ASSURANCES MADE TO THE SHIPPERS:

I have personally attended many meetings over the past several years regarding the City's plan to abandon the Kellar Line to the Park District in favor of a new connection from the West. **Multiple times the shippers were assured that service over the Kellar Line would not be discontinued until viable service from the West was established and running smoothly.** In fact, our early support of the Kellar Line conversion was tied by a letter from the shipper's group to just such an understanding with the City, along with the strong suggestion that new service from the UP/west endure a 24-month trial period before the Kellar Line was taken out of operation. That way, the different theories about how cars will actually be routed, handled, delivered and priced could be tested to be sure the system will in fact allow for fairly efficient operation and cost structure. Since we are largely still operating in the "realm of the theoretical" in terms of the new connection, we still feel that such a trial period would help prevent possible mistakes associated with removing a well-connected, time-honored line from operation. Just as soon as the logistical problems are resolved and a viable connection to the UP line from the West is successfully completed and considered fully operational at a reasonable cost, we will gladly abide by our promise to use that connection. Until such time, we ask that you order service restored over the Kellar Branch Line, as it still seems to offer us the best option in terms of service and cost structure to our company at this time.

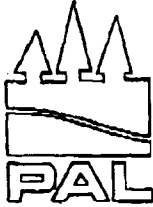
In closing we wish to acknowledge the past efforts of the City of Peoria in attempting to provide a long-term solution to the issue of direct rail service to our business, and to the STB for its work in attempting to reach some sort of balance point on some difficult issues. This letter is not meant to be critical of anyone's individual efforts. We only wish to protect our business from any and all of the elements of concern brought to light by this letter.

We look forward to your timely response. If you have questions or comments I can be reached at 309.692.2004 during regular business hours.

Most Respectfully,



Rob Happach
President / CEO
Carver Lumber Company



November 23, 2005

To: Rob Happach

From: Jeff Parish

Hello Rob,

As you know, PAL is your buying agent, and is a non-profit organization that works in your best interest. Keeping this in mind, I am very concerned about your rail freight situation, as it is negatively affecting your profitability.

I have investigated some freight rates for the main high volume products that you use, OSB, SPF dimension lumber, and Douglas Fir dimension lumber. I have determined that the delivered cost is the same, whether the carloads are delivered to Amerhart on the UP rail, or to Carver Lumber on the CIRY. The reason is that short line rail companies often contract with the large carriers to handle their local deliveries. The short line carriers are paid by the long haul companies to provide this service. This is part of the total freight charge, and does not represent an additional charge to the shipper or to the buyer.

Therefore, it is extremely financially beneficial to you if the cars are delivered to your yard, and not to another location. When the cars are delivered to another location, it adds handling charges, as well as another freight bill to get the material hauled to your yard. Truck freight rates have risen dramatically this year, and will continue to do so, as some trucking companies have been forced out of business by rising fuel costs. Additionally, there are sometimes freight rebates available for multiple rail deliveries to a single location. If these cars aren't delivered to your yard, it will make you ineligible for any of these rebates.

In conclusion, as your agent, I hope that your local rail delivery can be back on line soon, as Carver Lumber is spending a lot of extra money on freight and handling, and in our competitive industry, no one can afford any unnecessary expenses.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeff Parish".

Jeff Parish

Forest Products Trader

Progressive Affiliated Lumbermen

PROGRESSIVE AFFILIATED LUMBERMEN

P.O. Box 823, Grand Rapids, Michigan 49518-0823 (616) 281-2826, Fax (616) 281-6823

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THOMAS F. MCFARLAND

January 11, 2006

By electronic mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Docket No. AB-1066X, *Central Illinois Railroad Company -- Discontinuance of Service Exemption -- in Peoria County, Illinois*

Dear Mr. Williams:

This responds to a pleading filed by Carver Lumber (Carver) on January 4, 2006 that is in the nature of a request for stay of the Board's decision served December 23, 2005, and to a Petition for Stay filed by Pioneer Industrial Railway Co. (PIRY) on January 9, 2006.

The PIRY Petition should be denied for failure to establish irreparable injury. PIRY would not suffer any injury if Central Illinois Railroad Company (CIRY) were to consummate its discontinuance authority on January 22, let alone irreparable injury. PIRY's right to provide service over the Kellar Branch was lawfully terminated months ago. PIRY thus lacks standing to seek a stay. PIRY's persistent filing of numerous pleadings since that time suggests an irrational vendetta against the City of Peoria (the City) and CIRY. The Board should have no part of that.

Carver is correct that the City promised not to remove the trackage involved in this proceeding (which would be permissible upon consummation of CIRY's discontinuance authority) until the City had arranged for alternative rail service to Carver by connecting another City-owned track to the Kellar Branch at a point west of Carver's facility. Carver is also correct that the track connection is not completed, so that alternative service could not be provided to Carver if the trackage involved in this proceeding were to be removed.

The City hereby reiterates its promise to Carver. As a result of that promise, CIRY hereby undertakes not to consummate the discontinuance authority (and the City undertakes not to remove the trackage) until the City certifies to the Board and to Carver that the track connection is complete and alternate rail service is available. If that certification were to occur prior to the January 22 effective date of the discontinuance, the discontinuance would not be

THOMAS F. MCFARLAND

Vernon A. Williams, Secretary

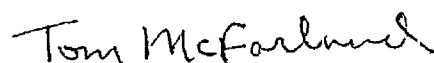
January 11, 2006

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consummated prior to that effective date. In other words, CIRY will not consummate the discontinuance authority and the City will not remove the trackage (1) until the City certifies to completion of the track connection; or (2) until January 22, whichever is later. CIRY would be agreeable to a condition to that effect in relation to its discontinuance authority.

CIRY will respond to arguments seeking reopening of the Board's decision in due course.

Very truly yours,



Thomas F. McFarland
*Attorney for Central Illinois
Railroad Company and The City
of Peoria, Illinois*

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cc: Mr. Rob Happach, Carver Lumber, *by fax to 309-693-7919*
David C. Reeves, Esq., *by fax to 202-663-7849*
Daniel A. LaKemper, Esq., *by fax to 309-697-8486*
Randall Ray, Esq., *by fax to 309-494-8559*
Melinda Sammons, Esq., *by fax to 815-339-6400*

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THOMAS F. MCFARLAND

January 19, 2006

By electronic mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Docket No. AB-1066X, *Central Illinois Railroad Company -- Discontinuance of Service Exemption -- in Peoria County, Illinois*

Dear Mr. Williams:

This refers to the letter to you from Mr. Rob Happach of Carver Lumber dated January 18, 2006.

It will be recalled that Central Illinois Railroad Company (CIRY) has undertaken not to consummate the discontinuance of service exempted in the decision served December 23, 2005 until a track connection is completed and alternative rail service is available from the west, or until January 22, 2006, whichever is later. The City of Peoria has also undertaken not to remove trackage in the portion of rail line for which discontinuance has been exempted under the same circumstances.

Mr. Happach contends that that is not enough. He wants the Board to stay the effectiveness of the discontinuance exemption until service from the west has been tested and found to be adequate.

That would not be appropriate. Mr. Happach's contention bears on the merits of discontinuance of service over a portion of the Kellar Branch, not on the timing of the effectiveness of that discontinuance. There was no contention in the record of the discontinuance proceeding that discontinuance should not be allowed unless and until service from the west was tested and found to be adequate. Mr. Happach states that such has been Carver Lumber's position "from several years ago," but that position was not expressed in the record of the discontinuance proceeding so that the parties could comment on it and the Board could consider it. It would not be appropriate to stay the Board's decision for an indefinite time while the adequacy of service from the west is tested, and perhaps to overturn the Board's decision if

THOMAS F. MCFARLAND

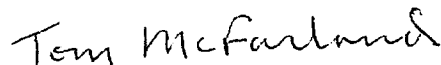
Vernon A. Williams, Secretary

January 19, 2006

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Carver Lumber deems that service to be inadequate. If that was Carver Lumber's position, it should have been expressed in the proceeding on the merits of the discontinuance.

Very truly yours,



Thomas F. McFarland
Attorney for Petitioner

TMcF:kl:wp8.0\1114\e-filestb2

cc: Mr. Rob Happach, *by fax to 309-693-7919*
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